IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE Petitioner	)	
v.	)	Cr. A. No: 0811006506
VINCENT S. BEDDIA, Respondent	)	

Date Submitted: August 5, 2009
Date Decided: August 27, 2009

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Final Order and Decision on Defendant's Motion to Suppress

On August 5, 2009, a hearing was held in this Court on Defendant's Motion to Suppress. The limited legal issue to be basis heard at this bifurcated hearing as set forth in paragraph (2)(a) of the Motion was that the Investigating Police Officer lacked reasonable articulable suspicion to stop the Defendant or require defendant to perform field coordination tests on the date, time, and place set forth in the Information. After receipt of testimony and legal argument by the parties, the Court reserved decision. This is the Court's Final Order and Decision on Defendant's Motion.

The Facts.

On November 10, 2008, at approximately 1:30 p.m., Sgt. Spagnolo of Delaware State Police Troop 2 had stopped to order lunch at Chick-Fil-A fast food restaurant in the

Governor's Square Shopping Center on Route 40 in Bear, Delaware.[1] Sgt. Sapgnolo had been working at headquarters at an administrative function. After ordering his lunch at the drive-up window, a Chick-Fil-A employee informed him that his lunch order was not yet ready, and requested him to park his vehicle into the restaurant's parking lot so that an employee could deliver his food order once it was prepared.

While Sgt. Spagnolo was waiting for his order in a parking lot, an unidentified Chick-Fil-A employee (hereinafter "the informant") approached Sgt. Spagnolo's vehicle and informed him that there was a vehicle being operated by a subject who may have been under the influence of alcohol in the drive-up lane of the restaurant. The car was identified as a red Ford Explorer. Sgt. Spagnolo asked the informant how he knew that that the individual may have been under the influence of alcohol. The informant replied that the individual had "very slurred speech" and that there was an open container of alcohol inside the vehicle. The informant further provided a description of the vehicle as a red Ford Explorer (hereinafter "the suspect vehicle"), and stated that there were two white males inside the vehicle.

Sgt. Spagnolo then observed the suspect vehicle drive to the pickup window and proceed past Sgt. Spagnolo's car and around a corner into the adjacent parking lot. As the suspect vehicle turned the corner, Sgt. Spagnolo observed a container of beer in the passenger's hand. At this point, Sgt. Spagnolo made a decision to stop the defendant's motor vehicle. While driving his unmarked vehicle, he followed the vehicle as it travelled approximately 100 feet and stopped in a parking space. Sgt. Spagnolo did not activate his emergency lights or siren, and parked his vehicle in front and partially to the

[1] Sgt. Spagnolo has been employed with Delaware State Police Troop 2 since March 10, 1986, and is a Shift Supervisor.

side of the suspect vehicle. Sgt. Spagnolo then approached the vehicle, identified himself as a Police Officer to the driver; later identified as Defendant Vincent J. Beddia (hereinafter "Beddia" or "defendant"). He informed defendant that he had received a report from a Chick-Fil-A employee that the driver had been driver had been drinking and driving.[2] Beddia responded that he had taken the day off from work on bereavement because his sister had passed away and he attend her funeral.

At that point, Sgt. Spagnolo noticed that defendant had a moderate odor of alcohol on his breath and that his eyes were "somewhat bloodshot." He also noticed that an individual in the front passenger seat had a can of beer in his hand, as well as two additional beer cans at his feet. Sgt. Spagnolo asked defendant for his driver's license, registration, and insurance, which Beddia provided immediately. Sgt. Spagnolo described Beddia's demeanor during the exchange as "very polite" and "very cooperative." Defendant informed Sgt. Spagnolo that he was on a bereavement day to attend his sister's funeral.

Sgt. Spagnolo then returned to his police vehicle and called for a road unit to respond to the scene. He then approached the Beddia's vehicle and requested him to exit his motor vehicle in order to perform a series of field sobriety tests.

Upon cross examination during the suppression hearing, Sgt. Spagnolo admitted that he did not see the suspect vehicle commit any motor vehicle or Title 21 violations, and that he would not have stopped the vehicle without the tip from the Chick-Fil-A employee. In addition, Sgt. Spagnolo testified that he did not know whether the informant personally observed any of the reported details or whether a third party

[2] Sgt. Spagnolo testified that the driver's side front window was already down as he was approaching the vehicle.

reported these details about the defendant to the Chick-Fil-A employee he spoke with. He also testified that during his conversation with Beddia, he did not notice any slurred speech on Beddia's part.

On cross-examination Sgt. Spagnolo testified he did not personally observe the defendant "do anything wrong". Sgt. Spagnolo admitted the defendant did not have an open container of beer and the two beers observed were on the floor in the motor vehicle in front of the passenger. Sgt. Spagnolo observed defendant drive 100 feet without any motor vehicle violations and the defendant parked properly in a parking spot. The defendant 'promptly responded" to his questions and responded in an "appropriate fashion". The defendant had "no difficulty" understanding Sgt. Spagnolo's questions. The defendant's eyes were "not glassy" and there was no slurred speech. There were also no manual dexterity issues in retrieving the motor vehicles legal documents. The defendant produced the vehicle documents without difficulty and Sgt. Spganolo observed "no evidence of verbal impairment".

The Law.

"On a motion to suppress evidence seized during a warrantless search, state bears the burden of proving that the challenged search and seizure does not violate the Fourth Amendment." *Daniel Hunter v. State of Delaware*, 783 A.2d 558, Del. Super., No.: 279, 2000, Steele, J. (August 22, 2001); *State v. Bien-Aime*, 1993 Del. Super,. LEXIS 132, Cr.A. No.: IK92-08-326, Toliver, J. (March 17, 1993) (Mem.Op.)(citations omitted).

In *State v. Robert S. Edwards*, 2002 Del. C.P. LEXIS 28, Clark, Judge (May 31, 2002) this Court applied the following standard to similar facts as follows:

> A police officer may detain an individual for investigatory purposes for a limited scope, but only if the detention is supported by a reasonable and articulable

> suspicion of criminal activity. *Jones v. State, 745 A.2d 856 (Del. 1999),* (citing *Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868,* (1968)). A determination of reasonable and articulable suspicion must be evaluated by the totality of the circumstances as viewed through the eyes of a reasonable, trained police officer under the same or similar circumstances, combining objective facts with the officer's subjective interpretation of them. *Id.* The Delaware Supreme Court defines reasonable and articulable suspicion as an officer's ability to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. *Id.* In the absence of reasonable and articulable suspicion of wrongdoing, detention is not authorized.
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In *State of Delaware v. John C. Dinan*, 1998 Del. C.P. LEXIS 31, (Welch, J. Oct. 15, 1998), this Court applied a "similar standard" for a motor vehicle stop by a police officer:

> As stated in *State v. Arterbridge, 1995 Del. Super. LEXIS 587, 1995 W.L. 790965* (December 7, 1995), the law with regard to "reasonable articulable suspicion" provides as follows:
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> The Fourth Amendment in Article 1, Sec. 6 of the Delaware Constitution protecting individual's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Del. Const. Art. I §6. Accordingly, a police officer must justify any "seizure" of a citizen. The level of justification required varies with the magnitude of the intrusion to the citizen. See, *U.S. v. Hernandez, 854 F.2d 295, 297 (8th Cir. 1988).* Not every contact between a citizen and a police officer, however, involves a "seizure" of a personal under the Fourth Amendment. See, *Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868, n16 (1968);* see also, *Thompson v. State, Ark. Supr., 303 Ark. 407, 797 S.W.2d 450, 451 (1990). . . .*
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> There are three categories of police-citizen encounters. See, *Hernandez, 854 F.2d 295 at 297.* First, the least intrusive encounter occurs when a police officer simply approaches an individual and asks him or her to answer questions. This type of police-citizen confrontation does not constitute a

seizure. *Robertson v. State, Del. Supr., 596 A.2d 1345, 1351 (1991)* (citing *Florida v. Bostick, 501 U.S. 429, 434, 115 L. Ed. 2d 389, 111 S. Ct. 2382 (1991); Hernandez, 854 F.2d 295 at 297.* Second, a limited intrusion occurs [like the facts of this case] when a police officer restrains an individual for a short period of time. This *Terry* stop encounter constitutes a seizure and requires that the officer have an "articulable suspicion" that the person has committed or is about to commit a crime. *Hernandez, 854 F.2d at 297.* Third, the most intrusive encounter occurs when a police officer actually arrests a person for a commission of a crime. Only "probable cause" justifies a full scale arrest. Id. n2. (emphasis supplied)

As stated in *Arterbridge*, "stopping an automobile falls under the second category and therefore requires that the officer have a reasonable articulable suspicion to do so." *Delaware v. Prouse, 440 U.S. 648, 59 L. Ed. 2d 660, 99 S. Ct. 1391 (1979).* Initially in this matter the Court, as it did in *Arterbridge*, must determine whether the police officer had a reasonable articulable suspicion to stop the defendant's vehicle on March 24, 1998. There was clearly a "seizure" because under the facts of this case, Officer Huber restricted the liberty by a show of authority by turning on his overhead lights, siren and beeping his horn when following the defendant. *Terry, 392 U.S. at 20 n.16.* This police contact "conveyed to a reasonable person that he or she is not free to leave." *United States v. Mendenhall, 446 U.S. 544, 545, 64 L. Ed. 2d 497, 100 S. Ct. 1870 (1980); Florida v. Royer, 460 U.S. 491, 502, 75 L. Ed. 2d 229, 103 S. Ct. 1319 (1983).* The Court must make this decision objectively by viewing the "totality of circumstances surrounding the incident at that time." *Mendenhall, 446 U.S. 544 at 545.*

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As stated in *State v. Harmon*, 2001 Del. Super., LEXIS 338, Bradley, J., August 22, 2001, the following standard applies:

"B. Legal Standard for the Stop

The quantum of evidence required for reasonable articulable suspicion is less than that of probable cause. *Downs v. State, Del. Supr., 570 A.2d 1142, 1145 (1990).* The former requires that an objective standard be met: "would the facts available to the officer at the moment of

> the seizure or the search 'warrant a man of reasonable caution in the belief that the action taken was appropriate?" *Terry v. Ohio, 392 U.S. 1, 21, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968)* (internal quotations omitted). If Harmon had not actually violated any statutes, this reasonable suspicion standard would be the appropriate one to have used. However, Harmon was charged with violating *21 Del. C. § 4114(a)*, and this violation provided the officer with probable cause to make the stop. *See, State v. Walker, 1991 Del. Super. LEXIS 104,* Del. Super., Cr. A. No. IK90-08-0001, Steele, J. (Mar. 18, 1991) (Order) (holding that changing lanes without a signaling is a violation of *21 Del. C. § 4155* which created probable cause for the officer to stop the vehicle.); and *State v. Huss, 1993 Del. Super. LEXIS 481,* *6-7, Del. Super., Cr. A. No. N93-04-0294AC, 0295AC, Gebelein, J. (Oct. 8, 1993) (stating, "clearly then, if probable cause exists to arrest, this provides more than the reasonable suspicion necessary to stop the vehicle."). *See also, Eskridge v. Voshell, Del. Supr., 593 A.2d 589 (1991)* (ORDER); *Austin v. Division of Motor Vehicles, 1992 Del. Super. LEXIS 10,* Del. Super., C.A. No. 91A-08-2, Goldstein, J. (Jan. 9, 1992) (Op. and Order); *State v. Lahman, 1995 Del. Super. LEXIS 611,* Del. Super., Cr. I.D. No. 9410011118, Cooch, J. (Jan. 31, 1995) (Mem. Op.); *State v. Brickfield*, 1997 Del. C.P. LEXIS 6, Del. CCP, Case No. 9609017975, Stokes, J. (May 8, 1997); *Webb v. State, 1998 Del. LEXIS 107,* Del. Supr., No. 332, 1997, Berger, J. (Mar. 26, 1998) (ORDER)."

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In *State v. Bloomingdale*, 2000 C.P. LEXIS 63, Smalls, C.J., (July 7, 2000), the Court of Common Pleas also similarly defined the standard for this limited seizure as reasonable articulable suspicion;

> The Supreme Court when examining the issue of reasonable articulable suspicion in *Jones v. State, Del. Supr., 745 A.2d 856 (1999)* stated that the determination of reasonable suspicion must be evaluated in the context of the totality of the circumstances as viewed from the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with an officer's subjective interpretation of those facts. The Court went on to hold that the determination in Delaware of whether an officer has reasonable articulable suspicion to detain an

> individual may rest not only on the Fourth Amendment of the U.S. Constitution, but also on Delaware Constitutional provisions. In reaching this decision, the Court pointed to *Arizona v. Altieri, 191 Ariz. 1 951 P.2d 866 (1977)* and concluded that a person's (particularly an anonymous caller's) subjective belief that another person is suspicious without more fails to raise a reasonable and articulable suspicion of criminal activity. (emphasis supplied).

Analysis.

An individual's right to be free from unreasonable searches and seizures is secured in Delaware by both the Fourth Amendment to the United States Constitution[3] and Article I, §6 of the Delaware Constitution.[4] In *Terry v. Ohio*, the United States Supreme Court held that a law enforcement officer may conduct a brief, investigatory seizure of an individual based on the officer's reasonable and articulable suspicion that criminal activity is afoot.[5] An officer's suspicion of criminal activity must be based on an adequate quantity of information of sufficient quality to create a reasonable and articulable suspicion that a crime has occurred, is occurring, or is about to occur.[6]

The quantum of evidence required for reasonable articulable suspicion is less than that of probable cause.[7] The former requires that an objective standard be met: "would the facts available to the officer at the moment of the seizure or the search warrant a man of reasonable caution in the belief that the action taken was appropriate?"[8]

Generally, the first step in analyzing this claim is to determine when the seizure occurred. Under Delaware law, a seizure occurs when "a reasonable person would

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[3] See U.S. Const. amend. IV
[4] See Del. Const. art. I, §6
[5] *Terry v. Ohio*, 392 U.S. 1, 30 (1968)
[6] *Bloomingdale*, 842 A.2d 1212 at 1216 (Del. 2004)
[7] *Downs v. State*, Del.Supr., 570 A.2d 1142, 1145 (1990)
[8] *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)

believe he or she was not free to ignore the police presence."[9] The defense argued that the seizure occurred when Sgt. Spagnolo pulled up beside the suspect vehicle and approached on foot. The State argued that the seizure occurred when Sgt. Spagnolo ordered Beddia out of his vehicle. However, regardless of when the seizure occurred, the Court finds that Sgt. Spagnolo lacked the necessary reasonable suspicion to seize the defendant. Therefore, the Court finds that it need not reach the issue of when the seizure occurred.

The State conceded during argument that the tip at issue here was anonymous, because the identity of the informant is unknown. It was also unknown whether a separate third party provided the information to the employer who provided the tip to Sgt. Spagnolo's constituted double hearsay. A brief investigatory automobile stop based on an anonymous tip of criminal activity or erratic driving is permissible where the tip at issue has sufficient indicia of reliability to give rise to reasonable suspicion.[10] To support reasonable suspicion for a brief investigatory stop of a motor vehicle:

> Anonymous tips normally should provide sufficient information, such as an accurate description of the vehicle, its license tag number, its location and direction of travel, or other details, to enable the officer to be certain she has identified the correct vehicle...The tip also must provide sufficient information to support the inference that the informant has actually witnessed a traffic violation that warrants an immediate stop.[11]

"When an officer's suspicion is aroused by an anonymous tip, whether that tip suffices to give rise to reasonable suspicion depends on both the quantity of the information it conveys as well as the quality ... of that information, viewed under the totality of the circumstances."[12]

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[9] *Jones v. State*, 745 A.2d 856, 867 (Del. 1999)
[10] *Jones v. State*, 745 A.2d 856 (Del. 1999); *Bloomingdale v. State*, 842 A.2d 1212, 1222 (Del. 2004)
[11] *Bloomingdale, supra*, 842 A.2d at 1222
[12] *Bloomingdale*, 842 A.2d at 1216

While the informant's tip in this case described the vehicle, its license plate number, its occupants, and its location, there are several other factors showing that the tip is lacking in both quality and quantity of information. First, Sgt. Spagnolo was unsure whether the informant personally witnessed the reported facts and events, or whether the informant was simply a messenger reporting what another person had seen and heard. Second, the informant did not give any information as to whether the actual witness saw and heard Beddia through a video monitor and intercom system, or face-to-face. This calls into question the accuracy and quality of the information reported.

The tip also failed to report sufficient indicia of illegal activity. In a very similar case brought before the Supreme Court of North Dakota, *State v. Miller*, 510 N.W.2d 638 (N.D.1994), an employee at a fast food restaurant reported to the police that a driver in the drive-up lane "could barely hold his head up," and gave a description of the vehicle, its license plate number, and location in the line. The officer who responded to the scene did not observe any traffic violations or illegal activity, but nonetheless stopped the vehicle and after conducting field sobriety tests, arrested the defendant for driving under the influence of alcohol. The North Dakota Court held that the anonymous tip, which "gave only some indication of possible criminal activity," and the officer's observations of innocent facts were insufficient to raise a reasonable and articulable suspicion.[13] The Court finds this analysis persuasive. As with a report that a driver "could barely hold his head up," a tip that a driver has slurred speech alone does not give rise to reasonable and articulable suspicion that a crime has occurred, is occurring, or is about to occur. The tip that there was also a container of alcohol in the vehicle does not bolster the tip's reliability. A passenger in a motor vehicle is not prohibited from possessing an open

[13] *State v. Miller*, 510 N.W.2d 638 (N.D.1994)

container of alcohol under the Delaware Code. Therefore, the tip regarding the alcohol container in the vehicle is merely a report of innocent activity, and does not give rise to reasonable and articulable suspicion, even when combined with the report that the driver's speech was slurred.

Finally, the tip regarding slurred speech was not corroborated by Sgt. Spagnolo's observations once he approached the vehicle on foot. Sgt. Spagnolo candidly testified that he did not notice any slurred speech on the part of Beddia. Sgt. Spagnolo's observation of Beddia's "somewhat bloodshot" eyes after attending a funeral and "moderate odor" of alcohol are also insufficient to give rise to reasonable suspicion under the totality of the circumstances here, particularly given the presence of an open container of alcohol legally in the vehicle by the passenger, not the defendant. When questioned, Sgt. Spagnolo could not tell the Court that an open container by a passenger was in violation of the law, or Title 21.

This Court realizes the minimum quantum of evidence that must be set forth in the record which constitutes reasonable articulable suspicion. For the reasons set forth above and as set forth in the facts, the State has simply not met the required burden in this Suppression record.

For the foregoing reasons, Defendant's Motion to Suppress is hereby GRANTED.

IT IS SO ORDERED this 27th day of August, 2009.

John K. Welch, Judge

/jb
cc: Ms. Juanette West
CCP Criminal Division Scheduling Supervisor